Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 1976

NO. 76-1320

J. KENNETH JENSEN,

Petitioner,

vs.

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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PETITIONER prays for a Writ of Certiorari to review the judgment of the Supreme Court of the State of California denying petitioner a hearing on December 29, 1976.

OPINION BELOW

Copies of the Opinions of the Supreme Court of the State of California and California Court of Appeals, not reported, are appended to this petition. The denial of petitioner's request for a hearing in the California Supreme Court December 29, 1976 was entered that date.

JURISDICTION

The jurisdiction of this Court is invoked under the provisions of 28 U. S. Code §1257(3) and U. S. Sup. Ct. Rule 19, 28 U. S. C. A.

QUESTION PRESENTED

Should a judge presiding in a state trial court disqualify himself from hearing a case when he is prejudiced against the attorney representing one of the parties?

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment of the U. S. Constitution which provides for the free exercise of religion. The Sixth Amendment to the U. S. Constitution which pro-

vides for a litigant to have the assistance of counsel in a criminal matter and the Fourteenth Amendment to the U. S. Constitution which provides no state shall deprive any person of due process or equal protection of the laws.

STATEMENT OF THE CASE

1. Petitioner, a California attorney, has been practicing law for approximately 15 years, principally doing trial work. In December 1970 petitioner first appeared in Court with his head wrapped with a orthodox sikh's turban, after he had undergone a craniotomy as a result of a motorcycle accident. For almost a year petitioner made over 200 appearances including lengthy jury trials without any comment regarding his head wrapping. Then, in the fall of 1970 another San Diego attorney, Bruce Singh Katz also began appearing in the San Diego Superior Court with a sikh's head wrapping.

2. When Mr. Katz appeared, the presiding judge required him to account for his religious beliefs. Mr. Katz submitted to the interrogation

and eventually was compelled to file a statement to his religious and philosophical convictions. Apparently the presiding judge approved of his beliefs and therefore he was permitted to practice without interruption or question in the San Diego Superior Court. After Mr. Katz had submitted to the interrogation, the presiding judge then told petitioner he must also submit to an interrogation for approval of his religious, philosophical, ethical and moral convictions or he would not be permitted to practice with his head wrapped. Petitioner declined to submit to such an interrogation.

3. After petitioner's refusal several of the judges, including the presiding judge, held a secret meeting (which was not in compliance with California Government Code §68071) in which they decided, the presiding judge would issue an order excluding petitioner from all departments of the Superior Court even though many of the judges would not have otherwise excluded him. This order was enforced and petitioner appealed to the Fourth District Court of Appeal.

4. The Appellate Court issued a Writ of Mandate on November 1972 in Case No. 4Civ. 11307 invalidating the Superior Court rule. After the Writ of Mandate was issued petitioner resumed practicing in the San Diego Superior Court and since that time has made thousands of appearances including lengthy jury trials in both State and Federal cases.

5. Also, after the Writ of Mandate was issued petitioner filed a complaint for deprivation of his civil rights in the Federal District Court against the judges responsible for preventing petitioner from practicing in the Superior Court. Unfortunately, the Federal Court dismissed petitioner's complaint holding that judges were clothed with an immunity.

6. The petitioner appealed that decision to the Ninth Circuit Court of Appeals and although the senior, Judge Ely, agreed that petitioner could not be prevented from practicing with his head wrapped, he affirmed the judgment of the Federal District Court that the judges could not be held liable in

damages for deprivation of petitioner's rights because of the doctrine of judicial immunity.

7. California Superior Court Judge Woodworth was one of the judges named as a defendant in that Federal lawsuit and had for the last seven years disqualified himself from hearing petitioner's cases because of his prejudice against petitioner's appearance; not only because of petitioner's head wrapping but also because of the style of suits petitioner wears.

8. However, on July 26, 1976 one of petitioner's matters, San Diego Superior Court Case No. 378360, was scheduled for hearing in the Law and Motion Department before respondent. Petitioner had filed a declaration of prejudice (Exhibit 1 filed with the California District Court of Appeals) requesting respondent to either disqualify himself or abide by proceedings set forth in California Code of Civil Procedure §170(5) (Reporter's Transcript, filed with California District Court of Appeals, p. 6, ll. 1-26, p. 7, ll. 1-5) and consequently ordered petitioner to return to court on July 29, 1976 and furnish a memorandum explaining the procedure required by

California Code of Civil Procedure §170(5) (p. 7, ll. 23-26, p. 8, ll. 1).

9. Judge Woodworth reminded petitioner that his manner of dress did not comply with the style of clothing dictated by the respondent (p. 4, ll. 15-16).

10. On July 29, 1976 when petitioner appeared in court, after having furnished the requested memorandum, respondent refused to abide by California Code of Civil Procedure §170(5).

11. For seven years, petitioner's clothing has been unacceptable to respondent (p. 13, ll. 6-8) and he has consistently disqualified himself and caused petitioner's cases to be transferred from his department because of this prejudice (p. 13, ll. 9-13). The times respondent has seen petitioner in court he is always neat in appearance (p. 22, ll. 20-21) and conducts himself with acceptable behavior (p. 27, ll. 11-14). Respondent cannot say petitioner's appearance interferes with or impedes the functioning of the court because for more than seven years respondent has not presided at a trial or hearing involving the petitioner.

12. Respondent continued to enforce a Superior

Court rule after the rule had been declared invalid by the California District Court of Appeals because the opinion was not published (p. 24, ll. 23-26, p. 25, ll. 1-7). (Exhibit 2 filed with the California District Court of Appeals).

13. Also, respondent once again reminded petitioner that his appearance as set forth in Exhibit 3 (filed in the California District Court of Appeals) violated the style of clothing required by respondent in his courtroom. Then respondent scheduled an Order to Show Cause for August 4, 1976, compelling petitioner to appear and show cause why he should not appear in court in clothing complying with respondent's dictates.

14. On August 4, 1976, petitioner appeared before the respondent in the clothing shown in Exhibit 4 (filed with the California District Court of Appeals). But, this time respondent considered petitioner's clothing acceptable except for the head wrapping (p. 22, ll. 4-13). Respondent further indicated that "if he approved of the quality of petitioner's philosophical convictions" (p. 23, ll. 8-23) he might permit peti-

tioner to practice in the Superior Court.

15. Unless petitioner complies with respondent's dictates, respondent has ordered him to "retain associate counsel to appear specially for you so you won't be forced to abandon your own conscientious principles, whatever they may be". (p. 28, ll. 22-25) Thereby, depriving petitioner's clients of representation by the attorney of their choice.

REASONS FOR GRANTING THE WRIT

1. The sikh's turban worn by petitioner is strictly prescribed. It is a symbol of respect. A long period of instruction and practice is required before one can perform this head wrapping. The wrapping takes more than ten minutes and a considerable space because it is 3 feet wide and 15 feet long.

2. Every individual has a basic right to choose his or her own lifestyle without undue governmental influence. A persons' manner of dress expresses and reflects ideas personal to him. An individual derives a sense of well being when he is attired in

the manner which is in harmony with his personal views of life.

3. A person's right to choose his appearance and clothing is a liberty guaranteed by the Federal and California Constitutions, Finot vs. Pasadena Board of Education, 250 Cal. App. 2d 189, 58 Cal. Rptr. 520 citing Kent vs. Dulles, 357 U. S. 117, 78 S. Ct. 113. In order for a governmental agency to require a waiver of a persons' Constitutional Rights, it must demonstrate that the benefits which the public gains by a restraint outweighs the deprivation of a persons' liberty, Finot vs. Pasadena Board of Education, supra.

4. It is essential for order to be preserved in the courtroom because it is important to a fair trial, but when the court imposes a highly personal standard which shows a social or ideological bias, it detracts from a fair and efficient trial by carrying social distinction into the courtroom, Johnson vs. Virginia, 373 U. S. 61, and becomes an unwarranted invasion of personal freedom.

5. In order for any rule respecting dress or

appearance to be valid, there must be a showing of a disruptive condition or a showing of the manner of dress interferring in some way or obstructing the courts process. A female attorney wearing a mini skirt is not considered disruptive, Peck vs. Stone, 304 NYS 2d 881, 32 App. Div. 2d 506.

6. Respondent is estopped from contending petitioner's head covering disrupts, interferes or in someway obstructs the court process. For six years petitioner has appeared in excess of two thousand times in the State trial and Appellate Courts and Federal trial and Appellate Courts in proceedings ranging from hearings to lengthy jury trials. Judge Kilgarif has described petitioner as conducting himself in his courtroom as "a perfect gentlemen at all times and an excellent attorney". Former Judge Mahedy, during a trial in his courtroom described petitioner's appearance as that of "an Indian diplomat".

7. Traditionally men have covered their heads to show respect. The English courts are an example of this. Clothing or a part of it may be symbolic and lead others to think the wearer holds certain fairly

well defined beliefs, such as a black arm band, a priest's collar, a nun's habit, a sikh's turban, a Jewish yarmulke, or a judge's robe. Such type of symbolic act is protected by the First Amendment, Tinker vs. Des Moines Independent Commonwealth School District, 393 U. S. 505, 89 S. Ct. 733.

8. Social or class distinction should not be carried into the courtroom by a Judge's social or ideological bias particularly when it impinges on a personal freedom, 56 Cornell Law Rev. pp. 200-204. To permit an attorney the freedom of his appearance and clothing only after he has been subjected to an inquiry into his beliefs would be to revive the evils of the Spanish Inquisition.

9. The U. S. Supreme Court has ruled such an inquiry unconstitutional. "Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or WEARS, or reads". (Emphasis added) "We deal with beliefs, with associations, with ideological matters. We must remember that we are dealing with citizens who have neither been accused

of crimes nor found guilty. They are being denied their freedom . . . solely because of their refusal to be subject to inquiry into their beliefs and associations". Kent vs. Dulles, supra.

10. In judicial proceedings the governmental interest which will justify the impairment of first amendment rights is a clear and present danger to the administration of justice. It must be reasonable determined that the operation of the judicial process is an eminent peril. Petitioner's appearance can pose no threat to the judicial system. Surely, the dignity of the judiciary rests on more substantial grounds.

Almost by definition the denial of one's freedom obstructs justice.

Therefore, petitioner requests this Court to issue its Writ of Certiorari to the Supreme Court of the State of California and further order the court to require the trial court judges to disqualify themselves from presiding over or hearing matters in which they are prejudiced against either of the parties involved or the attorneys representing

them.

Respectfully Submitted,

J. KENNETH JENSEN

APPENDIX

COURT OF APPEAL—STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

COURT OF APPEAL - FOURTH DIST.
FILED
NOV 30 1976
ERWIN L. MYSZYNSKI, Clerk
DEPUTY CLERK

J. KENNETH JENSEN,
Petitioner,
vs.
SUPERIOR COURT, ETC., COUNTY OF SAN DIEGO,
Respondent.

4 Civ. No. 16349

SUPERIOR COURT NO. 378360

BY THE COURT:

The petition for writ of mandate with request for temporary stay is denied as it relates to any general disqualification of Judge Woodworth. This order is without prejudice to a petition for writ of mandate addressed to the issue of Mr. Jensen's attire, if the superior court acts contrary to this Court's opinion in Jensen v. Superior Court (San Diego County) 4 Civ. No. 11307.

Brown
Presiding Justice

Copies to: Superior Court-SD
J. Kenneth Jensen, Esq.-SD
Donald L. Clark, Esq.-SD
District Attorney-SD

ATTACHMENT

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

DEC 29 1976

I have this day filed Order

HEARING DENIED

In re: 4 Civ. *No.* 16349

Jensen

vs.

Superior Court, San Diego

Respectfully,

G. E. BISHEL
Clerk

48703-877 8-76 3M OSP

J. KENNETH JENSEN
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LA JOLLA, CALIFORNIA 92037
TELEPHONE 459-2993

March 18, 1977

Clerk of the Supreme Court
of the State of California
350 McAllister
San Francisco, California 94102

Re: Jensen vs. Superior Court
4 Civ. 16349

Dear Clerk:

On December 29, 1976 the California Supreme Court denied my Petition for Hearing in the above referenced matter. I am now docketing a Petition for Writ of Certiorari in the United States Supreme Court. This is a request to certify and transmit all of the records in this matter to that court in Washington D.C., pursuant to Rule 21, Title 28, U.S.C.A., Supreme Court Rules.

Very truly yours,

J. KENNETH JENSEN

JKJ/js

IN THE SUPREME COURT OF

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SUPERIOR COURT OF CALIFORNIA,
FOR THE COUNTY OF SAN DIEGO,

Respondent.

CERTIFICATE OF SERVICE

I, JANIS SHEPHERD, declare:

That on March 23, 1977 a copy of this petition for a Writ of Certiorari was malied, postage prepaid to the following:

Lloyd M. Harmon Jr.
County Counsel
302 County Administration Center
San Diego, California 92101

Clerk of the Superior Court
220 West Broadway
San Diego, California 92101

Fourth District Court of Appeals
1350 Front Street
San Diego, California 92101

California Supreme Court
350 McAllister
San Francisco, California 94102

I further declare that all parties required to be served have been served.

Janis Shepherd
JANIS SHEPHERD